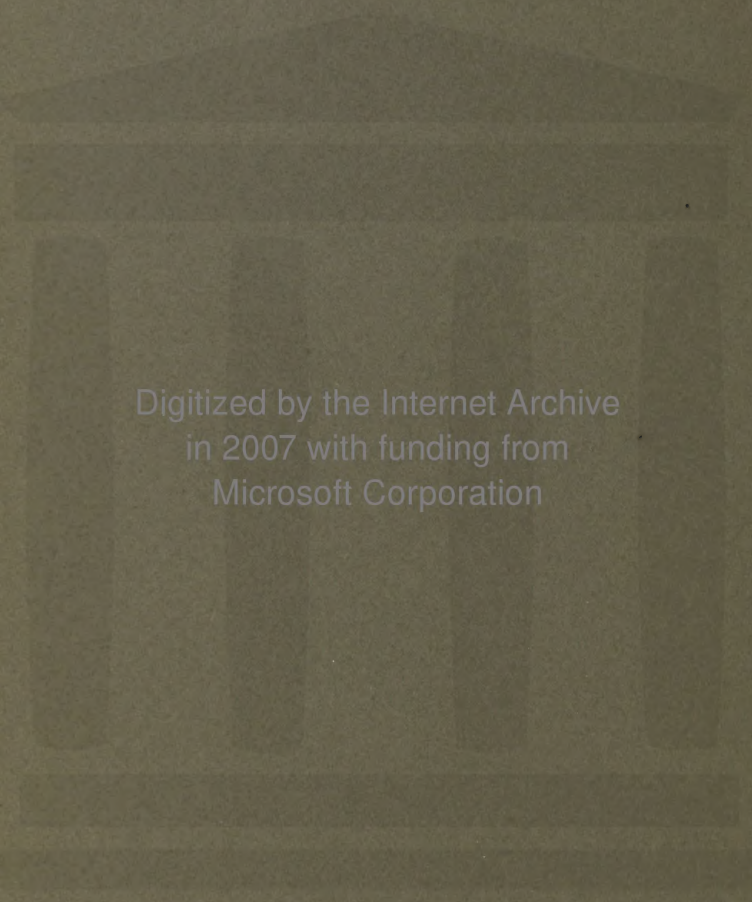
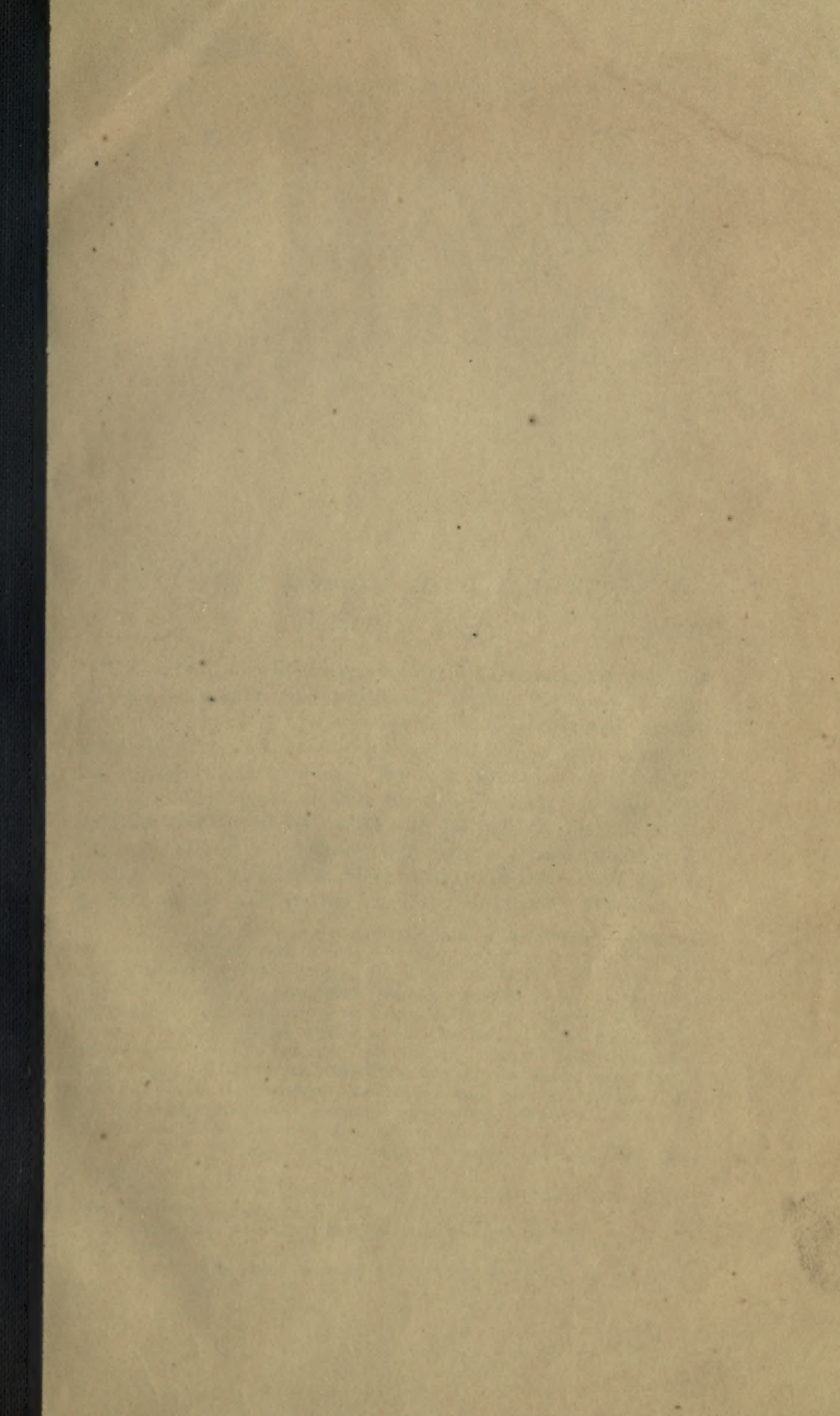


Baldwin, James Fosdick
The King's Council
from Edward I to
Edward III

JN
378
B23



Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation



JN
378
B23

[James Fosdick Baldwin
111]

The King's Council from Edward I to Edward III

THE early history of the privy council¹ presents many problems for investigation and treatment. During the hundred years prior to Richard II the organisation of this body was steadily taking form, while it exercised in every direction great administrative and judicial powers. The best known works upon the subject are incomplete, as they are either mainly concerned with its later history² or deal solely with its judicial side.³ For the formative period of the fourteenth century I have published an account of certain features which distinguish the council, such as its records,⁴ the oath, the Star Chamber, and others.⁵ It remains to

¹ The usual term for the fourteenth and most of the fifteenth century was *consilium regis*, which might be called also *privatum* or *secretum consilium*, or *le conseil continual*. It was even known also as *magnum et secretum consilium* or *le grand et continual conseil*, being called 'great' however not for its size, but for its importance and dignity, in the same sense that a member was designated as *un grant et prive*. The term *consilium ordinarium*, which has been much employed by modern writers with reference to this time, was not used during the period in question, when, in spite of variety in terminology, it is impossible to discern more than one sworn council of the king, whatever differentiations came about at a later time. The view that there existed several permanent councils is given in Pike, *Constitutional History of the House of Lords*, pp. 42-4.

² A. V. Dicey, *The Privy Council*; Sir Harris Nicolas, *Proceedings of the Privy Council*, 7 vols.

³ Sir Francis Palgrave, *Original Authority of the King's Council*; Sir Matthew Hale, *Jurisdiction of the House of Lords*.

⁴ 'Early Records of the King's Council,' *American Historical Review*, vol. xi. no. i. October 1905.

⁵ 'Antiquities of the King's Council,' *English Historical Review*, vol. xxi. January 1906.

(1)

B
A35750
25.5.45

show something more of the council with regard to its composition and character. The subject does not admit of direct treatment, for the membership of the council was never openly stated and its proceedings were secret and informal. But we can learn a great deal from a study of the men who are known to have belonged to it, taking them first by classes and then as individuals, and noting particularly the formalities of their appointment, the reasons for retaining them, and the employments to which as councillors they were put. Following in this manner the data given us, we may observe the character of the council as it was under Edward I, with the changes that occurred by the time of Richard II. It will be found that in this period the council passed through a certain transition, in which from a large and heterogeneous number it became a small select body, while its membership from a condition of doubtful relations became perfectly strict and definite.

With this object in view we may take as a starting-point the succinct definition given by Palgrave, that 'the council was composed of the chancellor, the treasurer, the justices of either bench, the escheators, the serjeants, some of the principal clerks of the chancery, and such others, usually but not exclusively, bishops, earls, and barons, as the king thought fit to name.'⁶

This statement, while satisfactory in a general way, calls for many explanations and modifications, for what was true at one time and under one set of circumstances was not true at another.

First, the aforesaid chief ministers were always considered to be at the head of the council in an *ex officio* relation. 'The chancellor, the treasurer, and others of the council' was the phrase by which this body was very frequently designated. In the absence of the king it was at first the function of the chancellor or the treasurer to preside, according as the council was held in the chancery or the exchequer, although in time the chancellor became the acknowledged head of the council.⁷ Associated with them should be noticed also the keeper of the privy seal, the steward of the royal household, and the chief constable, whose positions in this respect were recognised later. The keeper of the privy seal was regarded as a necessary member of the council certainly from the later

⁶ *Op. cit.* p. 20. In the treatise known as the *Modus tenendi Parliamentum* the following description of the council is made: *Cancellarius Angliæ, thesaurarius, camerarius, et barones de scaccario, iusticiarii, omnes clerici et milites regis ad placita, qui sunt de consilio regis* (p. 27).

⁷ For the chancellor's position as presiding officer see, e.g., Close Roll, 41 Ed. III, m. 13; Nicolas, i. 12. William of Wykeham is styled *capitalis secreti consilii ac gubernator magni consilii* (*Rot. Parl.* iii. 388). A century later Sir John Fortescue expressed the opinion that 'ye chaunceler, when he is present, may be presydent, and have ye supreme rule off all ye counsell' (*The Governance of England*, ed. Plummer, ch. xiv.)

years of Edward III,⁸ and in the councils of Richard II was regularly named, together with the chancellor and treasurer. As regards the other ministers, who it is true were occasionally in the council, efforts were made at that time to have them likewise recognised. Once it was proposed in parliament that all other councillors be dismissed, leaving the five great officers who alone were said to be sufficient for a council.⁹ Again, when the well-known council of 1386 was appointed it was at first the request of the commons that the commission should include four of the great officers, adding to the usual three the steward, but only the three in fact were afterwards named.¹⁰ In the later years of Richard each of the five officers is found in the council,¹¹ and from the reign of Henry IV they were invariably recognised as members *ex officio*.¹²

Next as members of the council, who also hold an official position in it, are mentioned the justices of either bench and certain minor officials of the court. With these should be classed the barons of the exchequer, whose position in this respect was very similar to that of the justices. In what sense these men are to be considered as members of the council calls for a word of explanation. Originally, it is clear, the justices and barons of the exchequer were sworn in the same manner as other councillors, the oath of that time being broadly inclusive of judicial and financial duties.¹³ Under Edward I probably most of the justices and barons of the exchequer were sworn as members of the council.¹⁴ This was not true of all however, for one Hugh de Louthur, who took the oath in 1306, had already been serving as a justice since 1303,¹⁵ and William Inge, who was sworn in the same year, had been summoned to parliaments, together with justices and others of the council, since 1295.¹⁶ From this time the justices and barons of the exchequer, while holding close advisory relations with the council, evidently became distinct and separate from it. The councillor's oath ceased to be taken by them, as oaths of their own offices were devised

⁸ Not only is he generally found attendant upon the council, but he was named with the chancellor and treasurer to be of the council appointed in 1376 (*Rot. Parl.* ii. 322). ⁹ *Ibid.* iii. 73. ¹⁰ *Ibid.* p. 221. ¹¹ Nicolas, i. 11, 12, 18, 79.

¹² That the membership of the ministers was at that time purely *ex officio* is indicated by the fact that the council appointed in 1404, which consisted of twenty-two, was by one authority stated to be seventeen; and again the council of 1406 in one account was reported to consist of twelve instead of seventeen members. The disparity was caused by the fact that it was unnecessary to appoint the five officers as members (Wylie, *Henry IV*, i. 412, 417).

¹³ The oath of 1257 is described as offered to the councillors, justices, and barons of the exchequer, and all other bailiffs except the sheriffs (*Ann. Burton*, p. 395).

¹⁴ Of men prominent solely as justices who are described as sworn of the council we may observe Walter de Wymburn (*Calendar of Close Rolls*, 12 Ed. I, p. 277), Hugh de Louthur, and William Inge (*Rot. Parl.* i. 219).

¹⁵ *Parl. Writs*, Index.

¹⁶ *Ibid.*

which were in large part germinations from the earlier one.¹⁷ That the justices were regarded as different from members of the council is at an early date suggested by such phrases as *per consilium domini regis et iusticiarios* and *coram consilio (vocatis thesaurario) et baronibus et iusticiariis de utroque banco*,¹⁸ and at a later date it is stated clearly in the words, *tam iusticiis per quos iustitia fit et redditur . . . quam aliis magnis et peritis de consilio nostro iuratis*.¹⁹ By the twentieth year of Edward III, therefore, the justices are clearly distinct from sworn members of the council, and from this time the settled relation to the council of the justices of both benches, the serjeants-at-law, and the barons of the exchequer was that of advisors or assessors, who were summoned on occasion by authority of the council.²⁰ It was furthermore enjoined repeatedly by ordinances of parliament that the council should summon these advisors in all legal questions, and that the justices should not fail to attend and to render their services.²¹

Still in some ways older traditions continued, the justices being often designated and treated as members of the council. In judicial proceedings they are commonly recognised as such,²² although they would defer to 'others of the council of more importance';²³ the inchoate chancery court consisted of 'the chancellor, the justices of either bench, the serjeants-at-law, and other *periti* of the council,'²⁴ while in the parliamentary writs they were summoned 'to consult with others of the council,'²⁵ a form which was continued into modern times. That it is possible to consider some as belonging to the council for certain purposes and not for others is shown in the instance of one Lawrence Drew, a baron of the exchequer under Richard II, who was declared to 'be of the council for law cases and not otherwise.'²⁶ This statement may be accepted as the first

¹⁷ A separate oath of the office of justice, the form of which is described as provided by the council, is mentioned in a record as early as the twenty-sixth year of Edward I (Memoranda Roll, Exch. K. R., m. 15). Several of the clauses of the justices' oath as given, undated, in the Red Book of the Exchequer prove to be derived from the original councillor's oath (*First Report on the Public Records*, p. 236).

¹⁸ *Rot. Parl.* i. 39, 67.

¹⁹ *Patent Roll*, 20 Ed. III, part ii. m. 22; *Calendar*, p. 135.

²⁰ A summons of this kind to the chief baron of the exchequer runs *de veniendo ad consilium regis pro avisamento habendo coram dicto consilio super quibusdam secretis negotiis domini regis* (Issue Roll [Pells], 46 Ed. III, Easter, m. 29).

²¹ In the first year of Richard II the commons petitioned that Magna Charta be confirmed, and that if any point be obscure it should be declared 'by those who shall be ordained to be of the continual council, with the advice of all the justices and serjeants and other such men whom they shall see fit to summon' (*Rot. Parl.* iii. 15; *Nicolas*, i. 80, 191; iii. 313; iv. 506, &c.)

²² *Calendar of Close Rolls*, 13 Ed. II, p. 234; *Parl. Writs*, ii. 217, &c.

²³ *Calendar of Patent Rolls*, 20 Ed. III, p. 135.

²⁴ *Close Rolls*, *passim*; *Baildon, Select Cases in Chancery* (Selden Society), pp. 89, 140, 150.

²⁵ *Parl. Writs*, *passim*; *Close Rolls*, *passim*.

²⁶ 'Que Laurence Dru soit de conseil en cas coursable de la ley et non pas autrement' (*Nicolas*, i. 75). The same opinion was expressed by Fortescue, the legist

which we have recognising any distinction such as that which is later known between the 'ordinary' and the 'privy' council.²⁷ As yet however there is no warrant in contemporary language for the term *consilium ordinarium*.²⁸

There were, moreover, at most times justices and other officers in the regular privy council. It was not unusual that judges and others, after long service, on retiring from office should be retained in the council as a special mark of honour. Thus in 1316 Roger de Brabazon, the aged chief justice of the king's bench, was relieved of his office with the permission 'to remain one of the secret council all his life, to be admitted to all the king's courts and councils, to attend parliaments at the king's summons, and to share the king's secrets.'²⁹ In the ninth year of Edward III William de Herle, because of his infirmities and in consideration of his great services as a justice of common pleas, was allowed to retire from office on condition that he remained one of the king's secret council and attended his parliaments and councils on summons.³⁰ Again, John de Stonore, chief justice of common pleas, after a long career on the bench was permitted to retire, and as a mark of special confidence was retained as one of the privy council.³¹ In the tenth year of Edward II Walter de Norwich on his own request was relieved of his office of treasurer, but the king, wishing to retain him in service, made him chief baron of the exchequer, willing that when able he should be present at the king's councils, both secret and others.³² At other times may be found a baron of the exchequer³³ and a king's clerk³⁴ who on retirement from office were similarly retained in the council as honorary members.

The clerks of the chancery, whom Palgrave next mentions, were the confidential clerks who read and wrote diplomatic letters, who endorsed the answers to petitions and made the numerous notes and memoranda of the council, corresponding therefore to the French *clerks du secret*. Besides clerks of the chancery there were others of secretarial employment known as king's clerks, who were frequently attached to embassies or served as messengers or as proctors or agents in foreign courts, for whose secrecy and loyalty it was deemed expedient to connect them with the council. Some of them were learned men, doctors of canon or civil law, while others rose to high ecclesiastical preferments. The special status of

of Henry VI's reign, that judges, barons of the exchequer, the clerk of the rolls and others 'may be off this counsell when that be so desyred and ellis not' (*Governance of England*, ch. xiv.)

²⁷ Nicolas, vii. p. xvii.

²⁸ This term has been incorrectly employed to denote the council of Edward I (Stubbs, *Constitutional History*, ed. 3, ii. p. 270).

²⁹ *Calendar of Patent Rolls*, 9 Ed. II, p. 437; *Parl. Writs*, ii. 162.

³⁰ *Calendar of Patent Rolls*, 9 Ed. III, p. 158.

³¹ Close Roll, 28 Ed. III, m. 29.

³² *Calendar of Patent Rolls*, 10 Ed. II, p. 655.

³³ *Ibid.* 16 Ed. II, p. 247.

³⁴ *Ibid.* 11 Ed. III, p. 434.

king's clerks as councillors is mentioned in several instances under Henry III,³⁵ and in the reign of Edward I it is clear that a considerable number of them were 'retained' as members of the council. In 1295 writs of summons to parliament were addressed to 'the deans sworn of the council, and other clerks of the council,'³⁶ the expression 'clerks of the council' frequently recurring.³⁷ In the later history of the council however such clerks as were retained in this manner were few, and these for special reasons. Their position and services can best be illustrated by instances in which the facts stand out clearly. In the reign of Edward I two ~~frs~~ friars, William de Gainsborough, a Minorite, and Hugh de Manchester, of the order of Preachers, were declared to have been sworn of the king's council.³⁸ In 1294 they were sent on an embassy to France; ³⁹ in 1295 they were entrusted with messages of the king each to the chapter of his order, the one at Assisi, the other at Argentan.⁴⁰ A reason for Edward I's special favour to the Minorite is seen in the fact that the order supported him in Gascony during his controversy with the king of France.⁴¹ In 1300 Gainsborough was sent on an embassy to the pope as one of the king's special envoys and proctors,⁴² and again in 1302 went to Rome to expedite negotiations of peace with the king of France.⁴³ The two friars are among those summoned to the king's council in 1297.⁴⁴

In the fifteenth year of Edward II occurs a memorandum that three clerks, Master William de Weston, Master John de Shorelitch, and Master Richard de Binteworth, were sworn of the king's council in the Tower of London.⁴⁵ Weston, a doctor of laws, was in the seventeenth year one of the king's proctors appointed for all cases affecting the king which were pending in the *parlement* of Paris by reason of the duchy of Aquitaine.⁴⁶ In the eighteenth year he was sent, with others, upon an embassy to the guardian of the king of Castile, 'whom they were to inform secretly concerning the king's wishes and upon divers other things;'⁴⁷ at another time he was sent as an envoy to the pope, when he was taken and imprisoned by the duke of Brabant.⁴⁸ In the seventeenth and again in the nineteenth year he was summoned 'with others of

³⁵ Matthew of Paris speaks of Laurence of Saint Martin as *domini regis clericus et consiliarius specialis* (*Chron. Mai.* v. 185), and of John Mansel as *clericus capitalis domini regis consiliarius* (*ibid.* pp. 213, 261, 355).

³⁶ *Parl. Writs*, i. 29; *Calendar of Close Rolls*, 23 Ed. I, p. 446.

³⁷ The king is asked to *assigner cleres de son conseil a survoer ses busoignes* (Parliamentary Proceedings, file 5, no. 14; also Diplomatic Documents, Chancery, file 1, no. 266).

³⁸ *Calendar of Close Rolls*, 23 Ed. I, p. 440.

³⁹ *Calendar of Patent Rolls*, 22 Ed. I, p. 85.

⁴¹ *Ibid.* 27 Ed. I, p. 302.

⁴⁰ *Calendar of Close Rolls*, 23 Ed. I, p. 440.

⁴² *Ibid.* 28 Ed. I, pp. 511, 543.

⁴³ *Ibid.* 30 Ed. I, pp. 584, 600.

⁴⁴ *Parl. Writs*, i. 55.

⁴⁵ *Calendar of Close Rolls*, 15 Ed. II, p. 503.

⁴⁶ *Calendar of Patent Rolls*, 17 Ed. II, p. 390.

⁴⁷ *Calendar of Close Rolls*, 18 Ed. II, p. 350.

⁴⁸ *Ibid.* 20 Ed. II, p. 647.

the council' to parliament.⁴⁹ Shoreditch, likewise a doctor of civil law, was sent several times on the king's service beyond the seas.⁵⁰ In the seventeenth year he was appointed to the custody of the rolls and writs before the justices of the bench.⁵¹ He was named, with Weston, one of the proctors to make excuses and defence before the king of France because Edward II did not come to Amiens to do homage for the duchy.⁵²

In the following reign Master John Wawayn, a canon of Lichfield, was engaged as a councillor⁵³ by letters patent dated 14 December 1336 : in a letter of 15 December he was said to have been sent on an errand to the archbishop of Cologne 'upon certain things near to the king's heart,'⁵⁴ and in a patent of 16 December received his commission for this service.⁵⁵ Master Simon Islip was another king's clerk who in the nineteenth year of Edward III was engaged as one of the king's council with an annuity of 50 marks.⁵⁶ He had already in 1342 served on an embassy sent to treat for a truce with France,⁵⁷ and in 1345 was one of the council appointed to assist the king's son Lionel while acting as regent during the king's absence.⁵⁸ In 1346 he was on a commission named to receive with courtesy the envoys coming from Spain and Hungary and to open and answer the letters which they brought.⁵⁹ Islip was a rising man at court; he was in turn king's secretary,⁶⁰ clerk of the privy seal,⁶¹ and keeper of the privy seal, and in these capacities was attendant at judicial proceedings of the council. A doctor in the canon and civil law, he received church preferments until in 1349 as the king's candidate he was elected archbishop of Canterbury.⁶² Master Andrew de Ufford, a brother of John de Ufford, chancellor and archbishop elect of Canterbury, was a doctor of civil law and a king's clerk, who had already served on several royal commissions,⁶³ when in 1346 he was retained as one of the king's council with a fee of 100 marks when beyond the seas and 50 marks when in England.⁶⁴ He was immediately appointed one of the proctors in behalf of the king to treat with Philip of Valois, 'styled king of France.'⁶⁵ The accounts of Master Andrew for his fees at the exchequer in accordance with

⁴⁹ *Parl. Writs*, vol. ii. pt. i. pp. 289, 335.

⁵⁰ *Calendar of Patent Rolls*, 16 Ed. II, p. 271; 17 Ed. II, pp. 347, 42.

⁵¹ *Ibid.* 17 Ed. II, p. 340.

⁵² *Ibid.* p. 426.

⁵³ *Ibid.* 10 Ed. III, p. 341.

⁵⁴ *Ibid.* p. 731.

⁵⁵ *Ibid.* p. 347.

⁵⁶ *Ibid.* 19 Ed. III, p. 506.

⁵⁷ *Foedera*, ii. 1185 (Record edition).

⁵⁸ *Ibid.* iii. 50.

⁵⁹ *Calendar of Patent Rolls*, 20 Ed. III, p. 138; *Foedera*, iii. 85.

⁶⁰ *Calendar of Patent Rolls*, 22 Ed. III, p. 131.

⁶¹ *Close Rolls*, 23 Ed. III, m. 2 d. It has already been shown how it was the clerk of the privy seal who became the clerk of the council: *ante*, vol. xxi. 18 ff., 1906.

⁶² *Dictionary of National Biography*, xlix. 75.

⁶³ *Foedera*, iii. 19, 50, 58; Newcourt. *Repertorium*, i. 79.

⁶⁴ *Calendar of Patent Rolls*, 20 Ed. III, p. 91.

⁶⁵ *Ibid.* p. 478.

this patent are preserved, and are of interest as the earliest record of a councillor's wages:⁶⁶

After the reign of Edward III however, clerks were no longer retained as members of the council. The attendance there of chancery clerks ceased to be necessary when, in the reign of Richard II, the secretarial work of the council was performed rather by the clerks of the privy seal,⁶⁷ and when the records of this body were in the charge of the latter office instead of being in the custody of the chancery. It was about the same time also that the chancery as a court of law became distinct in its organisation from the council.⁶⁸ Moreover it was no longer considered that clerks, whether of the chancery or of any other office, were of sufficient dignity to be in any way attached to the council. Regarded by the nobles as a bureaucratic element, they could no longer be members when the aristocracy was dominant. In the councils of Richard II, therefore, which were appointed under parliamentary influence, this class was quite eliminated, and very infrequently afterwards is any mere clerk to be found as one of the council.⁶⁹

Another element in the composition of the council, overlooked in Palgrave's definition, consisted of a few aliens who were even formally sworn and retained. More clearly than any other class they reflect the personal policy of the king, who thus honoured them either out of favour or for the special diplomatic services which they might render, in some instances paying them large rewards. Most of these foreigners were dignitaries of the church, cardinals of the church of Rome or nuncios of the pope, upon whom this honour was conferred to improve the king's relations with the papacy. Thus in 1314 Edward II appointed three nephews and two other adherents of Clement V,⁷⁰ and in like manner three years later named Peter d'Euse, a brother of John XXII, and two nephews of the same pope to be of his council for life.⁷¹ A letter of the king to d'Euse and the two nephews, granting their annual pensions and

⁶⁶ These accounts state his days of service and wages from 11 May of the twentieth year until 24 October of the twenty-first year, as follows:—

11 May to 12 July	in England	62 days	5 <i>l.</i> 13 <i>s.</i> 4½ <i>d.</i>
12 July to 24 Dec.	abroad	166 days	30 <i>l.</i> 6 <i>s.</i> 4½ <i>d.</i>
25 Dec. to 17 July	in England	204 days	18 <i>l.</i> 12 <i>s.</i> 6½ <i>d.</i>
17 July to 4 Sept.	abroad	49 days	8 <i>l.</i> 18 <i>s.</i> 11¾ <i>d.</i>
4 Sept. to 24 Oct.	in England	50 days	4 <i>l.</i> 11 <i>s.</i> 5½ <i>d.</i>

Robes, 1 for 20th year, 2 for 21st year @ 4 m., 8*l.*

76*l.* 11*s.* 9½*d.*

His accounts continue in this way until 24 February of the twenty-third year (Accounts, Exchequer, K. R., 96/2 & 3). Cf. *ante*, vol. xxi. 10.

⁶⁷ See *ante*, vol. xxi. 17 ff., 1906.

⁶⁸ The problem of the separation of the chancery from the council needs further examination.

⁶⁹ It is hardly an exception to the rule that the clerk or master of the rolls was not infrequently one of the council (Nicolas, i. 64).

⁷⁰ *Calendar of Patent Rolls*, 7 Ed. II. p. 82.

⁷¹ *Ibid.* 11 Ed. II, p. 50.

requesting their influence at the papal court,⁷² explains the reason for these appointments. At various times under Edward II and Edward III in the same relation may be noticed at least four cardinals,⁷³ a pope's notary,⁷⁴ and a papal nuncio.⁷⁵ *Special note*

There was evidently a policy of strengthening the king's friendly relations with Genoa when, in 1315, Charles de Fiesco, a captain of the city, whom Edward II calls his kinsman, was retained as one of the king's council, household, and following.⁷⁶ Anthony de Pessaigne, of Genoa, designated as *dilectus et fidelis miles et consiliarius noster*,⁷⁷ was a favourite emissary of Edward III, being sent repeatedly to Rome, to France, and to Aquitaine.⁷⁸ In 1336 Nicolas de Fiesco, a citizen of Genoa and a cardinal, was engaged as one of the king's council with a yearly fee of twenty pounds,⁷⁹ and forthwith was sent from Genoa to hire galleys and ships for the transport of horses in the king's service, mention being made of the long friendship existing between the kings of England and the city of Genoa.⁸⁰

In this period, when the struggle with France was imminent and all possible alliances were promoted, the friendship of England and Aragon was expressed in a similar way. In 1329 Raymund Corneli, a subject of the king of Aragon, who had come to England with messages from the government of that kingdom, was engaged as one of the king's council for life, with a fee of 200 pounds yearly out of the issues of Aquitaine, saving his fealty due to the king of Aragon.⁸¹ It was declared that Raymund had always been a well-wisher to the royal house of England, and the king opened to him the secrets of his heart concerning certain things to be explained to the ruler of Aragon.⁸² It was also with reference to the war with France that an alliance, which already had some foundation,⁸³ was contracted with Odiin, lord of Cuik, in Brabant. In 1329 two knights were sent to persuade him to be of the king's council and retain all his life, the envoys being given discretion as to the lands,

⁷² The letter of 1322 requests that they procure the cessation of the annoyances to which the king has been subjected in the court of Rome: *Velitis sic viriliter et efficaciter interponere partes vestras (Foedera [Record ed.] ii. 495; [original ed.] iii. 971).*

⁷³ *Calendar of Patent Rolls*, 7 Ed. II, p. 82; 11 Ed. II, p. 59; 8 Ed. III, p. 29; 10 Ed. III, p. 247.

⁷⁴ *Ibid.* 11 Ed. II, p. 25.

⁷⁵ *Ibid.* 17 Ed. III, p. 111.

⁷⁶ *Ibid.* 9 Ed. II, p. 340.

⁷⁷ *Calendar of Close Rolls*, 6 Ed. III, pp. 581, 582.

⁷⁸ *Ibid.* 6 Ed. III, pp. 581, 582; *Calendar of Patent Rolls*, 6 Ed. III, p. 269; *Foedera* (Record ed.), ii. 403, 420; (original ed.), iii. 924; iv. 524.

⁷⁹ *Calendar of Patent Rolls*, 10 Ed. III, p. 247.

⁸⁰ *Ibid.* pp. 321, 328; *Calendar of Close Rolls*, 10 Ed. III, pp. 686, 733.

⁸¹ *Calendar of Patent Rolls*, 3 Ed. III, p. 416; *Calendar of Close Rolls*, 6 Ed. III, p. 532.

⁸² *Ibid.* 3 Ed. III, pp. 565, 566.

⁸³ In 1295 John, lord of Cuik, had done homage to Edward I (*Foedera* [orig. ed.], ii. 677).

revenue, and money to be offered him.⁸⁴ In accordance with an agreement which was made he received an annuity of 250 pounds,⁸⁵ besides an indemnity for his losses in the war.⁸⁶ In addition to serving in the war he was especially empowered by the king to treat for alliances with the emperor and other princes.⁸⁷ In like manner, in 1345, while certain negotiations with Flanders were pending, two citizens of Ypres and one of Ghent, who were then acting as envoys, are mentioned as having been sworn of the council, with a grant of robes each year.⁸⁸ The practice of retaining counsellors abroad caused the king sometimes to speak of his *consilium in partibus transmarinis*.⁸⁹

Edward III's fondness for foreigners, which in one instance was carried to the extent of creating one of them a peer,⁹⁰ was naturally disliked and opposed in parliament, as is shown in the following instance: Master Raymund Pelegrin, a Gascon and special nuncio of the pope, in view, it is said, of his approved fidelity to the king, was sworn of the council and numbered among the king's clerks and counsellors.⁹¹ In the twentieth year the commons in parliament petitioned that his pension should be annulled, but they were answered that Master Raymund was a liege man of the king, born in Gascony, and sworn of his council.⁹² It was further declared on the part of the king that for his good service and faithfulness Master Raymund was to be considered a denizen and no alien, and therefore exempt from any ordinance touching the property of aliens.⁹³ If the lords, and commons then failed they succeeded ultimately in excluding the foreigners from the council. In the time of the ascendancy of parliament under Richard II no members outside the estates were appointed, so that, like the clerks already mentioned, the aliens were a transient element which came to be practically eliminated from the council.⁹⁴

Another group, more in keeping with the historic character of the council, were the knights and bannerets. Hardly a separate estate at first, they came to be known as the 'bachelors' as distinguished from the 'lords' of the council.⁹⁵ While in the earlier reigns no

⁸¹ *Calendar of Patent Rolls*, 3 Ed. III, p. 445; *Foedera* (Record ed.), ii. part ii. p. 773.

⁸² *Ibid.* (Record ed.), vol. ii. part ii. pp. 895, 914, 1178; (orig. ed.) iv. 627, 654.

⁸³ *Ibid.* (Record ed.), vol. ii. part ii. pp. 1076, 1102; (orig. ed.) v. 107, 145.

⁸⁴ *Ibid.* (Record ed.), vol. iii. part i. pp. 32, 65, 66; (orig. ed.) v. 445, 487.

⁸⁵ *Calendar of Close Rolls*, 17 Ed. III, p. 185.

⁸⁶ *Foedera* (orig. ed.), iii. 677; *Calendar of Patent Rolls*, 11 Ed. II, pp. 53, 59.

⁸⁷ Namely, Guiscard d'Angle, lord of Angle, in Poitou, who in 1377 was made earl of Huntingdon (Courthope, *Historic Peerage*, p. 262).

⁸⁸ *Calendar of Patent Rolls*, 17 Ed. III, p. 111.

⁸⁹ *Rot. Parl.* ii. 163.

⁹⁰ *Calendar of Patent Rolls*, 23 Ed. III, p. 346.

⁹¹ The presence of Master Peregrino de Fano, a Gascon, is noted in the council of Richard II at the time of his reactionary policy (Issue Rolls [Pells], 16 Ric. II, Easter, 15 July, 28 August; 17 Ric. II, 3 December).

⁹² Nicolas, *op. cit.* i. 18.

special notice is made of such knights,⁹⁶ by Edward III they were plainly regarded with particular favour, and in several instances were allowed wages or annuities. Indeed the work of the council seems often to have been performed by the officers, knights, and other persons of lower rank unattended by any lords,⁹⁷ while there were individual knights reputed to have great influence with the king. One of these was Robin de Forest, who in 1338 was engaged as one of the king's councillors, with an annual fee of 100 marks for life,⁹⁸ and who is mentioned for his faithful services.⁹⁹ Of all the knights of the council the most assiduous in the work of the government was Bartholomew de Burghersh, a king's chamberlain, who first appears in the council in the twentieth year.¹⁰⁰ From the accounts at the exchequer of his wages, which run from the twenty-fifth through the twenty-ninth year, some idea of the labours of a councillor may be formed.¹⁰¹ In the first of these years his services, extending through different terms, amounted to 82 days, and in the succeeding years to 109 days, 249 days, 240 days, and 207 days respectively.¹⁰² The 249 days are reported to have been spent entirely at London. No other record of the time shows so clearly the constancy of the council's work. Burghersh may be observed as one of the council hearing cases in the Star Chamber,¹⁰³ assisting the justices by sitting in the court of king's bench,¹⁰⁴ examining petitions,¹⁰⁵ and drawing up a compact between the king and certain merchants,¹⁰⁶ while in the many perfunctory tasks of administration no name occurs more frequently than his.¹⁰⁷ Among the various offices which he held were those of warden of the Cinque Ports and

⁹⁶ In the council appointed at the instance of the barons in 1318 one banneret was to be named by the earl of Lancaster (Stubbs, *Const. Hist.* ii. 360).

⁹⁷ For example, an indenture of the thirty-fifth year was made in the presence of the chancellor, the treasurer, two knights, and four lesser men (Close Roll, m. 10 d).

⁹⁸ *Calendar of Patent Rolls*, 12 Ed. III, pp. 189, 465, 523.

⁹⁹ *Calendar of Close Rolls* 15 Ed. III, p. 88; *Foedera* (orig. ed.), v. 529.

¹⁰⁰ *Calendar of Patent Rolls*, 20 Ed. III, p. 136.

¹⁰¹ 'Particulae computi Bartholomei de Burgherssh de redditibus et vadiis suis existentis super consilium regis per diversas vices' (Accounts, Exchequer, K.R., 96/4-7).

¹⁰² Thus in the twenty-sixth year Burghersh's days of service in the council with wages at 20s. a day were as follows:—

5-9 and 16-31 Oct.	19 days	19l.
2-15 Nov. and 27 Nov.-4 Dec.	20 "	20l.
8-19 Dec.	11 "	11l.
8 March-7 April	29 "	29l.
15-29 May	15 "	15l.
1-7 and 15-22 June	15 "	15l.
	109 days	109l.

Accounts, Exch., K.R., 96 5.

¹⁰³ *Calendar of Patent Rolls*, 20 Ed. III, p. 136; *Calendar of Close Rolls*, 27 Ed. III, p. 618. ¹⁰⁴ *Coram Rege Roll*, Trinity, 24 Ed. III, m. 32.

¹⁰⁵ *Tradatur ista petitio B. de Burghesse ad inquirendum, etc.* is a note upon one petition ('Ancient Petitions,' no. E 876).

¹⁰⁶ *Calendar of Close Rolls*, 23 Ed. III, p. 98.

¹⁰⁷ *Ibid.* 23-27 Ed. III, *passim*.

constable of Dover Castle, to which he was appointed three times under Edward III.¹⁰⁸ Another knight of the king's chamber was Guy de Brien, who from the twenty-third year was hardly less active in the council than was Burghersh,¹⁰⁹ and who by the end of the reign is known as a lord of great prominence.¹¹⁰ Sir Richard Sturry, who for his special personal influence is described as *regi familiarissimus*,¹¹¹ and Sir Richard Stafford were knights who with others were attacked in the Good Parliament of 1376 as 'evil counsellors,' and were removed from the council.¹¹² As distinguished from the justices, clerks, and others of minor rank, knights, being of parliamentary estate, were considered legitimately qualified to hold their places in the council along with the prelates and barons. In each of the councils of Richard's early years two or more of them were appointed, while in the latter part of the reign they were to a still greater extent favoured and employed by the king, whose policy of absolutism depended upon them.¹¹³

Finally, as to the lords of the council, specified as the 'bishops, earls, and barons whom the king thought fit to name,' some of the most difficult questions arise.

As to the number of councillors in normal times¹¹⁴ we are never definitely informed, nor has any method of estimating this number led to certain results.¹¹⁵ It is clear however that only some of the baronage were considered to belong to the council. As early as 1250 Matthew of Paris speaks of the magnates, 'especially those who are of the king's council,'¹¹⁶ and in 1305, at the close of a parliament, a proclamation of Edward I dismissed the archbishops, bishops, and other prelates, earls, barons, knights, citizens, and burgesses who were present, requiring the bishops, earls, barons, justices, and others who were of his council to remain.¹¹⁷ That one might be constantly a member of parliament without being of the king's council is shown in the case of the bishop of Norwich, who was sworn of the council in 1306, though he had been summoned to parliaments for four years previously;¹¹⁸ and that the position thus acquired was broken by the death of the king is shown by the fact that the same bishop of Norwich was again sworn under Edward II.¹¹⁹ A particular status of councillor is

¹⁰⁸ Haydn's *Book of Dignities*, p. 318.

¹⁰⁹ *Calendars*, passim.

¹¹⁰ Dugdale, *Baronage*, ii. 151. ¹¹¹ *Chron. Angl.*, ed. E. Maunde Thompson, p. 87.

¹¹² *Ibid.* p. lxx; Stubbs, *Constitutional History*, ii. 452.

¹¹³ See my article on 'The Privy Council of the Time of Richard II,' *American Historical Review*, vol. xii. October 1906.

¹¹⁴ The councils which were on several occasions appointed by the barons or by parliament were revolutionary or exceptional bodies, which are of no aid in determining the numbers at other times.

¹¹⁵ The names of witnesses upon the charter rolls have been taken as a guide, but they were not necessarily sworn councillors. Compare Maitland's remarks on the witnesses to the charter roll of 37 Henry III, *ante*, vol. viii. (1893), pp. 726 ff.

¹¹⁶ Matth. Paris, *Chron. Mai.* v. 118.

¹¹⁷ *Rot. Parl.* i. 159.

¹¹⁸ *Ibid.* i. 219; *Parl. Writs*, i. index

¹¹⁹ *Rot. Parl.* i. 350.

pointed out in the case of Lord Beaumont, who at his trial in 1323 was declared to be a liege man of the king, a baron, and one *de magno et secreto consilio iuratus*.¹²⁰ Again, in 1352 a special fee was allowed the bishop of Norwich, who on his retention as one of the king's council was granted for life the profits of a town for the livery of himself and his men.¹²¹ A few years later a privilege which continued to belong to members of the council, but not to those of the house of lords, was recognised, when in certain judicial proceedings the earl of Arundel, being declared to be one of the council, was permitted in his absence to send his advice in writing.¹²²

The lords of the council, therefore, though often merging in the house of lords, were a body quite distinguishable from the peers throughout the fourteenth century.

There are reasons, furthermore, for believing that of the lords sworn of the council the number was not large, and that they were retained in this manner only for special reasons. In the case of some it was considered to be beneath their dignity to be bound, as knights and clerks were, by the councillor's oath; and they preferred their status as prelates and barons. For example, in 1386 the archbishop of Canterbury was reluctant to take the oath, claiming as a general prerogative of the church of Canterbury the right to be present at all parliaments and councils, secret or other.¹²³ Again, in 1410, when others of the council were sworn, the prince of Wales was excused from taking the oath, as was explained, because of his dignity.¹²⁴ The reluctance of the lords to bind themselves in this way was no doubt a reason for the repeated insistence of parliament that the council should be sworn.¹²⁵ There was no inconvenience if they were unsworn, for it was possible to consider any lords who were summoned as of the council for the time being, and this practice was continued in the fifteenth century.¹²⁶ The irregular and uncertain attendance of the lords left the council, therefore, much of the time in the hands of the lesser men, who might indeed be but the tools of a faction. Several times during the course of the fourteenth century, in order to check this tendency, efforts were made on the part of the nobles to reorganise the council by appointing a committee of barons to be in constant attendance. In 1318, the revolutionary year of Edward II, it was proposed that eight bishops, four earls, four barons, and

¹²⁰ *Parl. Writs*, ii. 285; *Calendar of Close Rolls*, 16 Ed. II, p. 717.

¹²¹ *Calendar of Patent Rolls*, 26 Ed. III, p. 241.

¹²² *Close Roll*, 41 Ed. III, m. 13.

¹²³ *Rot. Parl.* iii. 223.

¹²⁴ 'Because of his highness and excellence of his honourable person' (*ibid.* iii. 628).

¹²⁵ *Ibid.* i. 351; ii. 322; iii. 7, 585, &c.

¹²⁶ This was another opinion expressed by Fortescue (*op. cit.* ch. xiv.) Under Henry VI an effort to restrict the participation of unsworn persons in the council was made in the ordinance that none should be permitted to remain in it but such as were sworn thereof, unless they were specially called by its authority (*Nicolas*, iii. 215).

a banneret should be named to act with the earl of Lancaster as a council for the king.¹²⁷ Again, in the parliament of the first year of Edward III it was demanded that four bishops, four earls, and six barons should be appointed to counsel the young king, of whom four at least should always be in attendance.¹²⁸ Similarly, in the fiftieth year of the same reign it was the determination of the Good Parliament to reconstruct the council, affording it, as was said, by the presence of lords of the land, including prelates and others to the number of ten or twelve.¹²⁹

How each of these barons' councils in its time was broken up as soon as formed is a matter of familiar history. They had no effect certainly on the permanent character of the council. In the reign of Richard II, again, conditions were favourable for a renewal of the struggle on the part of the lords and commons, whose intention it was to exclude the minor officials, clerks, aliens, and favourites who had been too influential, and to maintain a council composed solely of prelates, lords, and knights. But this policy even then was but temporarily and partially successful.¹³⁰

In conclusion, from the facts here gathered, it appears that the sworn council of the Edwards was a wide and heterogeneous body. It included at most times perhaps several score of men, counting officers, prelates, barons, knights, justices, clerks, honorary members, aliens, and favourites, such as could never have formed an effective working body. Some of them, it is true, were not strictly members of the council, but only assistants. Some also who were actual councillors were given this rank purely as an honour, or from special reasons of diplomacy, or out of sheer favouritism. Others formed a working group with strongly marked official tendencies, while the influence of the nobles, partly from their own non-attendance, was at most times much overbalanced. The attack of the Good Parliament in 1376 marks the beginning of another period in the history of the council, when for a number of years, down to 1437, the close of Henry VI's minority, the lords and commons manifested their purpose of controlling this body themselves. Under parliamentary pressure the council was then made a smaller and more select body, with the elimination of most of the lesser men. When the royal power revived however, as it did in the later years of Richard, and again under the Lancastrians, the same bureaucratic tendencies which existed under Edward III are seen to have returned, with an increased number of members, especially of knights, lawyers, and other men of inferior rank. The privy council of the later period, therefore, is not to be regarded as a separate organisation from that of the earlier time, but as a continuous growth under new conditions.

JAMES F. BALDWIN.

¹²⁷ Rot. Parl. i. 453.

¹²⁸ Ibid. ii. 52.

¹²⁹ Ibid. ii. 322.

¹³⁰ American Historical Review, vol. xii. pp. 1-14.

1376-1377
3 members
1377-1378

under
control
naturally

no. on!

you will see about here
the number of people



LIBRARY

APR 19 1915

UNIVERSITY OF TORONTO

JN
378
B23

Baldwin, James Fosdick
The King's Council
from Edward I to Edward III

PLEASE DO NOT REMOVE
CARDS OR SLIPS FROM THIS POCKET

UNIVERSITY OF TORONTO LIBRARY

double
add 5
multiply 50
add